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Superfund

July 15, 2019

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SUPERFUND DIVISION

Sandeep Mehta
USEPA Region 7
Mail code: SEMDREMB
Lenexa, KS 66219

Re: Vogel Draft Five Year Review

Dear Mr. Mehta,

In response to your June 28, 2019 electronic mail request, the Iowa Department of Natural Resources, (Iowa DNR) has reviewed the latest draft of the fifth Five Year Review for the Vogel Superfund Site and has the following comments:

The fourth bullet point under section 6.1, Other Findings, states:

- *"Iowa State Registry is being phased out by the State of Iowa. IDNR has advised that this registry is being phased out. To replace the Institutional Control for the site, an environmental covenant would be required to be placed on the property. Implement an Environmental Covenant in pursuant to the provisions of IC # 4551 that addresses the contaminated areas of the site in accordance with the decision documents."*

The bullet point above implies that Vogel is required to implement an Environmental Covenant (EC). While the Iowa DNR is encouraging existing sites listed on the Registry to voluntarily replace the Registry listing with an Environmental Covenant (EC), it is not a requirement to do so nor have we indicated that the Registry is being phased out. The Iowa DNR still considers a Registry listing as an enforceable institutional control. We will encourage sites currently listed to consider placing an EC on the property as a way of getting delisting from the Registry, but in view of the situation described, we request that this bullet point be removed from the Five Year Review.

The fifth bullet point under section 6.1, Other Findings, states:

- *RAOs for groundwater related to the point of compliance as defined in October 2000 Explanation of Significant Differences document are not consistent with the EPA guidance, "Summary of Key Existing EPA CERCLA Policies for Groundwater Restoration, June 26, 2009, OSWER Directive 9283.1-33" and will need to be revised/clarified before site completion.*

The Iowa DNR does not support or agree with this finding. This specific issue had already been reviewed and agreed upon by EPA during the 2000 ESD and there has been no technical or specific reasoning provided explaining the requirement for the change of point of compliance with groundwater protection standards. When discussed via phone and e-mail conversations, the response provided by the EPA to the Iowa DNR has been that 2009 EPA guidance requires this change. As stated in the referenced guidance, the guidance is not a rule and cannot be enforced as such. This requirement was not mentioned in the previous five-year review draft nor was it brought to our attention or Vogel's during the December 12, 2018 meeting between the EPA, Iowa DNR and Vogel. We believe that the process, by which this drastic change in requirements at the site was made, has no technical or regulatory justification. The result of attempting to impose such a change only serves to undermine

the good faith efforts historically completed and currently being initiated by Vogel to implement extensive (and expensive) remedial actions at the site.

We were copied on a July 9, 2019 letter addressed to you from Danielle Schreiber of the Verdant Law Firm addressing this subject. We have reviewed that letter and concur with each point made by Ms. Schreiber. We do not support the inclusion of this bullet point and request that it be removed. Please note that if the EPA continues to advocate for changing the point of compliance, it is doing so without the support of the Iowa DNR. As the lead agency for the site and a partner with the EPA, we request that you take our recommendation and remove this finding.

Please contact Amie Davidson (amie.davidson@dnr.iowa.gov or 515-725-8307) or Hylton Jackson (hylton.jackson@dnr.iowa.gov or 515-725-8338 for further discussion.

Sincerely,

A handwritten signature in black ink that reads "Alex Moon". The signature is written in a cursive, flowing style.

Alex Moon, Chief
Land Quality Bureau

CC via email:

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